

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #7	CCRB Case #: 201700928	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/04/2017 2:30 PM	Location of Incident: West 153rd Street between Broadway and Riverside Drive	Precinct: 30	18 Mo. SOL 8/4/2018	EO SOL 8/4/2018	
Date/Time CV Reported Mon, 02/06/2017 11:36 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/06/2017 11:36 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Anderson Ortiz	3319	949424	033 PCT
2. POM Joseph Carolan	07447	953730	033 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Coyle	09641	951641	033 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Anderson Ortiz	Abuse: Sergeant Anderson Ortiz stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Joseph Carolan	Force: Police Officer Joseph Carolan pointed his gun at § 87(2)(b)	
C.SGT Anderson Ortiz	Abuse: Sergeant Anderson Ortiz frisked § 87(2)(b)	
D.POM Joseph Carolan	Abuse: Police Officer Joseph Carolan frisked § 87(2)(b)	
E.SGT Anderson Ortiz	Abuse: Sergeant Anderson Ortiz searched § 87(2)(b)	
F.POM Joseph Carolan	Abuse: Police Officer Joseph Carolan searched § 87(2)(b)	
G.SGT Anderson Ortiz	Abuse: Sergeant Anderson Ortiz searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on February 6, 2017.

On February 4, 2017, at approximately 2:30 p.m., § 87(2)(b) was sitting in his parked, 2015 Chrysler 200 on West 153rd Street, between Broadway and Riverside Drive, in Manhattan, when Sgt. Anderson Ortiz, PO Joseph Carolan, and PO John Coyle, from the 33rd Precinct, pulled up alongside of him and stopped his vehicle (**Allegation A**). PO Carolan allegedly pointed his gun at § 87(2)(b) (**Allegation B**). § 87(2)(b) was then removed from his vehicle and subsequently frisked and allegedly searched by both PO Carolan and Sgt. Ortiz (**Allegations C, D, E, and F**). Sgt. Ortiz then allegedly searched § 87(2)(b)'s vehicle (**Allegation G**). § 87(2)(b) was ultimately released without being arrested or issued a summons.

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) initially accepted mediation during his in-person statement, but later requested that the case be returned to the Investigation Unit.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED].
- § 87(2)(b) has filed a Notice of Claim against the City of New York regarding this incident but did not disclose the sum of money he is seeking as redress (Board Review 02).

Civilian and Subject Officer CCRB Histories

- § 87(2)(b) has one prior CCRB complaint, § 87(2)(b)
[REDACTED]
[REDACTED]
- Sgt. Ortiz has been a member of the NYPD for six years. Sgt. Ortiz has been the subject of nine prior allegations stemming from five cases. In Case #201510324, frisk, search, vehicle search, and refusal to provide name and shield number allegations were substantiated, and command discipline A was recommended by the CCRB. There has been no disposition given by the NYPD as of the writing of this report.
- PO Carolan has been a member of the NYPD for four years, and this is his first complaint.

Potential Issues

- Exterior security video footage was obtained by the Stable Car Parking Garage, located at 614 West 153rd Street, in Manhattan. However, the footage did not contain any police activity. Therefore, the investigation was unable to obtain video footage of this incident.

Findings and Recommendations

Explanation of Subject Officer Identification

- It is undisputed that PO Carolan, Sgt. Ortiz, and PO Coyle all participated in the stop of § 87(2)(b) § 87(2)(g) .
- § 87(2)(b) alleged that the officer who pointed his gun, frisked, and searched him was described as a 5'7" tall, 180-pound white male, who had brown hair, a beard, and who appeared to be in his early 30s. PO Carolan, who is a 5'10" tall, 165-pound white male, with brown hair and was § 87(2)(b) old at the time of this incident, according to his NYPD photograph, acknowledged approaching § 87(2)(b)'s driver's side window and frisking him during the incident. § 87(2)(g)

Allegation A – Abuse of Authority: Sergeant Anderson Ortiz stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B – Force: Police Officer Joseph Carolan pointed his gun at § 87(2)(b)

It is undisputed that § 87(2)(b)'s vehicle was stopped by officers on February 4, 2017. § 87(2)(g)

§ 87(2)(b) alleged that he parked his rental car, a Chrysler 200, on the north side of West 153rd Street. He believed the officers, who pulled up alongside of his parked vehicle, wanted his parking spot, so he waved his hand to indicate that he was not leaving the spot. § 87(2)(b) was wearing a black jacket and a black face mask which covered his face below his nose, and left only his eyes and nose exposed. He turned around away from the driver's side window and gathered his personal belongings from the passenger's seat while listening to the radio. § 87(2)(b) then turned back around and noticed that PO Carolan was outside of his vehicle pointing his gun at him. § 87(2)(b) was not given any commands prior to observing PO Carolan pointing his gun at him. PO Carolan yelled at § 87(2)(b) to open the door and get out, and § 87(2)(b) complied. Once he opened the door, PO Carolan grabbed § 87(2)(b) by his upper left arm and pulled him out of the vehicle. § 87(2)(b) in the filing of his own Notice of Claim, confirmed both the appearance of the mask he was wearing, noting that it covered his face from his philtrum down, and that PO Carolan pointed his gun at him (Board Reviews 02 and 04).

PO Carolan testified that, while sitting in the front passenger's seat at a red light facing westbound on Amsterdam Avenue, he observed § 87(2)(b) drive past the officers northbound on West 153rd Street in a gray Chrysler 200 from approximately 15 to 20 feet away, wearing a black ski mask which covered his whole head and only made his eyes visible. PO Carolan was personally aware of an active crime pattern at the time of this observation, Burglary Pattern 16, which involved individuals committing burglaries while wearing masks that displayed only their eyes and driving either rental Chrysler 200s or 300s. He noted that approximately a week or two prior to the incident, he responded to a burglary call and reviewed video footage that showed an active burglary by perpetrators wearing masks displaying only their eyes. Sgt. Ortiz, who was driving the police vehicle, followed § 87(2)(b) for approximately a block and a half before § 87(2)(b) pulled over into a legal parking spot. Sgt. Ortiz pulled up alongside of § 87(2)(b)'s vehicle and turned on the emergency lights. PO Carolan approached the driver's side window and observed § 87(2)(b) still with his ski mask on, displaying only his left hand with his right hand not visible and positioned near his right waist area. PO Carolan did not recall

whether he drew his weapon or pointed it at § 87(2)(b) but did fear for his safety because § 87(2)(b) was wearing a mask and not displaying both hands. He asked § 87(2)(b) two or three times to see his hands, which § 87(2)(b) did not comply with, and then asked § 87(2)(b) to step out of his vehicle. § 87(2)(b) complied and voluntarily stepped out of the vehicle (Board Review 06).

Sgt. Ortiz stated that he personally observed § 87(2)(b) drive northbound in a Chrysler 200 while wearing a black ski mask, but did not recall the street that he passed the officers on. The observation reminded Sgt. Ortiz of Burglary Pattern 16 involving males wearing masks and driving Chrysler 200s, and added that the burglaries included in the pattern involved the suspects using tools to break into doors and safes. Sgt. Ortiz noted that, because he was the Field Intelligence Officer, he had informed specialty units within his command of the pattern, based on video surveillance, pictures, and prior arrests made. Sgt. Ortiz pulled up alongside of § 87(2)(b)'s parked vehicle, turned the emergency lights on, and allowed PO Carolan and PO Coyle to effect the stop prior to personally getting out of the vehicle. Sgt. Ortiz did not recall whether PO Carolan drew his firearm and pointed it at § 87(2)(b) (Board Review 07).

PO Coyle did not remember whether he personally observed § 87(2)(b) drive past the officers' vehicle, but remembered that a brief conversation among the officers regarding the burglary pattern ensued. PO Coyle approached the passenger's side of § 87(2)(b)'s vehicle. He did not see whether PO Carolan drew his gun or pointed it at § 87(2)(b) (Board Review 08).

The Pattern Report of Citywide Burglary Pattern 16 listed 26 different complaint reports and 14 Wanted Posters. The description of the pattern itself describes unknown perpetrators entering commercial establishments and forcing open doors and/or gates. Of the 14 Wanted Posters, ten of them displayed surveillance photos of perpetrators covering their faces with masks and hooded sweatshirts. Only one of the posters specifies a four-door Chrysler sedan (Board Reviews 10 and 11).

The Stop, Question, and Frisk Report generated by PO Carolan states that PO Carolan observed § 87(2)(b) wearing a ski-mask displaying only his eyes, and his vehicle and clothing description fit Burglary Pattern 16, which involved males wearing masks and dark-colored clothing to commit burglaries in commercial establishments while also conducting surveillance in newer model four-door sedans (Board Review 12).

An officer may stop an individual when he reasonably suspects that a person has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210; 352 N.E. 2nd 562 (1976) (Board Review 09). An officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another's personal safety. Police Department v. Gliner, OATH Index, #955/00 (Board Review 13).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: Sergeant Anderson Ortiz frisked § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Joseph Carolan frisked § 87(2)(b)

It is undisputed that PO Carolan frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b) alleged that he was asked to put his hands on the car by both PO Carolan and Sgt. Ortiz. § 87(2)(b) told the officers that he was not consenting to any searches, and Sgt. Ortiz replied, “We’re not searching you. We’re frisking you.” Both PO Carolan and Sgt. Ortiz patted down § 87(2)(b) with PO Carolan on his right side and Sgt. Ortiz on his left side. The officers patted § 87(2)(b) down from his shoulders to his ankles, including his two jacket pockets, waistband, and both ankles (Board Review 04).

PO Carolan acknowledged frisking § 87(2)(b) believing that he frisked his waistband for contraband. PO Carolan stated that he frisked § 87(2)(b) for his safety, and thought that § 87(2)(b) could possibly have a weapon on him due to the fact that he was suspected of burglary, a violent crime, and because he had refused to initially show his right hand. PO Carolan did not observe any bulges on § 87(2)(b) and the frisk yielded negative results for any weapons (Board Review 06).

Sgt. Ortiz did not remember if a frisk was conducted of § 87(2)(b) by either him or other officers, but stated that it was protocol to frisk someone for suspicion of a violent crime, such as burglary, which § 87(2)(b) was suspected of during this incident (Board Review 07).

person. All of the officers collectively did not remember Sgt. Ortiz searching the vehicle, and all testified that § 87(2)(b) was brought to the back of the vehicle to explain to him why he was stopped (Board Reviews 06, 07, and 08).

The Stop, Question, and Frisk Report indicated that a search of § 87(2)(b) did not occur, and does not mention whether § 87(2)(b)'s vehicle was searched (Board Review 12).

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Squad: 7

Investigator:	_____	<u>Frank Montgoris</u>	_____
	Signature	Print	Date
Squad Leader:	_____	<u>Diana Townsend</u>	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date